

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.1038 of 2007.

Date of Order : 20/11/2007

Baldev Raj Versus Harbans Singh @ Harward Singh

Coram: HON'BLE MR. JUSTICE HEMANT GUPTA

Present: Shri Sham Lal Bhalla, Advocate for the petitioner.

Shri Kanwaljit Singh, Senior Advocate with
Shri Tejinder Bishnoi, Advocate for the respondent.

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J U D G M E N T

HEMANT GUPTA, J.

The challenge in the present revision petition is to the order passed by the learned trial Court dated 25.7.2003 dismissing the application for restoration of the suit for possession and the order in appeal dated 27.9.2006, passed by the learned First Appellate Court.

The plaintiff-petitioner filed a suit for possession of the property situated at Mochpura Bazar, Ludhiana. The said suit was dismissed in default on 23.11.1993. An application for restoration of the suit was filed on 20.5.1994 supported by an affidavit. It was pointed out in the said application that the defendant has not filed the written statement for many dates, which created a doubt in the mind of the plaintiff that he would not get justice from the learned trial Court. The petitioner alleged that he moved a transfer petition before the learned District Judge on 25.10.1993. The petitioner is illiterate person. Notice of the said application was issued to the respondent. The petitioner remained under the bonafide belief that the Court file has been summoned. He was informed by the peon of the Court that he need not to appear before the learned trial Court as the transfer petition is

pending before the learned District Judge. The application was stated to be pending for 28.5.1994. The plaintiff points out that when the application for transfer of the case was pending, he had no knowledge that the case was dismissed in default on 23.11.1993. The respondent was not served on various dates in the application of transfer. When the statement of the petitioner was recorded on 4.6.1994, the petitioner made a statement on 4.6.1994 that his transfer petition has become infructuous as the suit was dismissed in default, though an application for restoration of the suit has been filed.

It may be noticed that Piare Lal-plaintiff who filed the suit, died on 17.10.1997 and the present petitioner was impleaded to represent his estate. In reply to the application for restoration of the suit, the defendant averred that he moved an application asking the plaintiff to produce the documents. Since the plaintiff did not produce the documents nor filed any reply, the suit was dismissed for want of prosecution. The application has been filed only on 20.5.1994. Therefore, the application is hopelessly time barred as well. The plaintiff appeared his own witness as AW-1. On the other hand, the defendant has appeared as RW-1 and deposed that the absence of the plaintiff on 23.11.1993 was intentional and willful.

The learned trial Court found that the petitioner has not produced any application for transfer nor any order passed by the learned District Judge for stay of the proceedings. Still further, the application has been filed after a lapse of more than 6 months. Therefore, the petitioner has failed to prove his case and consequently, the application was declined. The learned First Appellate Court found that since the record of transfer of the case from the court of the learned District Judge has not been produced,

therefore, the petitioner has concocted a false story in order to justify his absence. Still further, the Court found that the plaintiff himself was at fault as he has not filed any reply to the application for production of the documents, filed by the defendant. Still further, the petitioner has not produced his Lawyer in the witness box and there is no explanation that as to why his Lawyer has not appeared before the learned trial Court. The petitioner has not disclosed the name of the peon who had advised him not to appear in the Court nor such peon has been examined as witness. Therefore, the Court found that the petitioner is making one concoction after the other in order to justify his absence and lapse. Thus, dismissed the petition with costs of Rs.5000/-.

While challenging the order passed by this Court, the petitioner has attached an application for transfer, filed before the learned District Judge; interim orders passed on such application as well as the order dismissing the transfer application. The respondent has not chosen to file any reply controverting the authenticity of such documents. Therefore, it is apparent that the stand taken by the petitioner that a transfer application was filed before the learned District Judge and that the suit was dismissed in default when such application was pending, cannot be said to be incorrect in any manner. It is the case of the petitioner that he was advised by the peon of the Court not to appear in the case as the records of the case have been summoned by the learned District Judge. It has come on record that the plaintiff was an illiterate person. Being an illiterate person, the plaintiff believed the statement of one or the other Court officials. It cannot be said that the stand taken by the petitioner is unjustified. In fact, the plaintiff has filed the suit for possession by affixing the Court fee. By delaying the suit

It is unfortunate that the application for restoration remained pending before the learned trial Court for a period of almost 9 years. The appeal against the order of the learned trial Court remained pending for another 3 years. Thus, it is the plaintiff who has suffered enormously as more than 13 years have lapsed since the time he moved an application for restoration of the suit. The Hon'ble Supreme Court of India in ***“N.Balakrishnan versus M.Krishnamurthy, AIR-1998 S.C.3222”*** was dealing with an application for restoration of the application filed for setting aside the ex-parte judgment which was dismissed in default. The application for restoration was filed after the delay of 883 days. The Hon'ble Supreme Court held to the following effect:-

“XX XX XX XX

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life span for such legal remedy for the redress of

the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time never causes would sprout up necessitating newer persons to seek legal remedy by approaching the Courts. So, a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest republicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

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13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy the Court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the Court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when Courts condone the delay due to laches on

the part of the applicant the Court shall
compensate the opposite party for his loss.

xx xx xx xx”

In case “*M.K.Prasad Versus P.Arunugam, AIR 2001
S.C.2497*”, the Hon'ble Supreme Court was again seized of an application
for setting aside of an ex-parte decree, filed with delay. The Court held to
the following effect:-

“xx xx xx xx

In the instant case, the appellant tried to explain the delay in filing the application for setting aside the ex-parte decree as is evident from his application filed under S.5 of the Limitation Act accompanied by his own affidavit. Even though the appellant appears not to be as vigilant as he ought to have been, yet his conduct does not, on the whole, warrant to castigate him as an irresponsible litigant. He should have been more vigilant but on his failure to adopt such extra vigilance should not have been made a ground for ousting him from the litigation with respect to the property, concededly to be valuable. While deciding the application for setting aside the ex-parte decree, the Court should have kept in mind the judgment impugned, the extent of the property involved and the stake of the parties. We are of the opinion that the inconvenience caused to the respondent for the delay on account of the appellant being absent from the Court in this case can be compensated by awarding appropriate and exemplary costs.”

Keeping in view the principles laid down in the aforesaid

judgments and other numerous precedents of this Court as well as the Hon'ble Supreme Court, it is apparent that carelessness or negligence in prosecuting the lis is not lack of sufficient cause to seek condonation of delay. In the present case, the petitioner has filed the suit for possession. There could not be any dilatory tactics adopted by the plaintiff in decision of the suit. The delay in decision of the suit is detrimental to the interest of the plaintiff. Thus, the stand of the petitioner is believable that under mistaken belief, he abstained from the proceedings before the learned trial Court. Therefore, the orders passed by the Courts below are in fact suffering from patent illegality and irregularity which has caused manifest injustice to the petitioner.

Consequently, the present revision petition is allowed. The orders passed by the Courts below are set aside. The suit is restored to its original number.

Parties through their counsel are directed to appear before the learned trial Court on 21.12.2007 for further proceedings, in accordance with law.

(HEMANT GUPTA)
JUDGE

20/11/2007

* mohinder